

quiry); 308 (notification to accused of charges) concerning other duties of the immediate commander when in receipt of charges.

When the immediate commander is authorized to convene courts-martial, *see* R.C.M. 403, 404, or 407, as appropriate.

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### **Rule 403. Action by commander exercising summary court-martial jurisdiction**

(a) *Recording receipt.* Immediately upon receipt of sworn charges, an officer exercising summary court-martial jurisdiction over the command shall cause the hour and date of receipt to be entered on the charge sheet.

#### **Discussion**

*See* Article 24 and R.C.M. 1302(a) concerning who may exercise summary court-martial jurisdiction.

The entry indicating receipt is important because it stops the running of the statute of limitations. *See* Article 43; R.C.M. 907(b)(2)(B). Charges may be preferred and forwarded to an officer exercising summary court-martial jurisdiction over the command to stop the running of the statute of limitations even though the accused is absent without authority.

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(b) *Disposition.* When in receipt of charges a commander exercising summary court-martial jurisdiction may:

- (1) Dismiss any charges;

#### **Discussion**

*See* R.C.M. 401(c)(1) concerning dismissal of charges, the effect of dismissing charges, and options for further action.

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(2) Forward charges (or, after dismissing charges, the matter) to a subordinate commander for disposition;

#### **Discussion**

*See* R.C.M. 401(c)(2)(B) concerning forwarding charges to a subordinate. When appropriate, charges may be forwarded to a subordinate even if the subordinate previously considered them.

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(3) Forward any charges to a superior commander for disposition;

#### **Discussion**

*See* R.C.M. 401(c)(2)(A) for guidance concerning forwarding charges to a superior.

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(4) Subject to R.C.M. 601(d), refer charges to a summary court-martial for trial; or

#### **Discussion**

*See* R.C.M. 1302(c) concerning referral of charges to a summary court-martial.

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(5) Unless otherwise prescribed by the Secretary concerned, direct a pretrial investigation under R.C.M. 405, and, if appropriate, forward the report of investigation with the charges to a superior commander for disposition.

#### **Discussion**

An investigation should be directed when it appears that the charges are of such a serious nature that trial by general court-martial may be warranted. *See* R.C.M. 405. If an investigation of the subject matter already has been conducted, *see* R.C.M. 405(b).

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### **Rule 404. Action by commander exercising special court-martial jurisdiction**

When in receipt of charges, a commander exercising special court-martial jurisdiction may:

- (a) Dismiss any charges;

#### **Discussion**

*See* R.C.M. 401(c)(1) concerning dismissal of charges, the effect of dismissing charges, and options for further action.

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(b) Forward charges (or, after dismissing charges, the matter) to a subordinate commander for disposition;

#### **Discussion**

*See* R.C.M. 401(c)(2)(B) concerning forwarding charges to a subordinate. When appropriate, charges may be forwarded to a subordinate even if that subordinate previously considered them.

#### **R.C.M. 404(c)**

(c) Forward any charges to a superior commander for disposition;

#### **Discussion**

See R.C.M. 401(c)(2)(A) for guidance concerning forwarding charges to a superior.

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(d) Subject to R.C.M. 601(d), refer charges to a summary court-martial or to a special court-martial for trial; or

#### **Discussion**

See Article 23 and R.C.M. 504(b)(2) concerning who may convene special courts-martial.

See R.C.M. 601 concerning referral of charges to a special court-martial. See R.C.M. 1302(c) concerning referral of charges to a summary court-martial.

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(e) Unless otherwise prescribed by the Secretary concerned, direct a pretrial investigation under R.C.M. 405, and, if appropriate, forward the report of investigation with the charges to a superior commander for disposition.

#### **Discussion**

An investigation should be directed when it appears that the charges are of such a serious nature that trial by general court-martial may be warranted. See R.C.M. 405. If an investigation of the subject matter already has been conducted, see R.C.M. 405(b).

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### **Rule 405. Pretrial investigation**

(a) *In general.* Except as provided in subsection (k) of this rule, no charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made in substantial compliance with this rule. Failure to comply with this rule shall have no effect if the charges are not referred to a general court-martial.

#### **Discussion**

The primary purpose of the investigation required by Article 32 and this rule is to inquire into the truth of the matters set forth in the charges, the form of the charges, and to secure information on which to determine what disposition should be made of the

case. The investigation also serves as a means of discovery. The function of the investigation is to ascertain and impartially weigh all available facts in arriving at conclusions and recommendations, not to perfect a case against the accused. The investigation should be limited to the issues raised by the charges and necessary to proper disposition of the case. The investigation is not limited to examination of the witnesses and evidence mentioned in the accompanying allied papers. See subsection (e) of this rule. Recommendations of the investigating officer are advisory.

If at any time after an investigation under this rule the charges are changed to allege a more serious or essentially different offense, further investigation should be directed with respect to the new or different matters alleged.

Failure to comply substantially with the requirements of Article 32, which failure prejudices the accused, may result in delay in disposition of the case or disapproval of the proceedings. See R.C.M. 905(b)(1) and 906(b)(3) concerning motions for appropriate relief relating to the pretrial investigation.

The accused may waive the pretrial investigation. See subsection (k) of this rule. In such case, no investigation need be held. The commander authorized to direct the investigation may direct that it be conducted notwithstanding the waiver.

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(b) *Earlier investigation.* If an investigation of the subject matter of an offense has been conducted before the accused is charged with an offense, and the accused was present at the investigation and afforded the rights to counsel, cross-examination, and presentation of evidence required by this rule, no further investigation is required unless demanded by the accused to recall witnesses for further cross-examination and to offer new evidence.

#### **Discussion**

An earlier investigation includes courts of inquiry and similar investigations which meet the requirements of this subsection.

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(c) *Who may direct investigation.* Unless prohibited by regulations of the Secretary concerned, an investigation may be directed under this rule by any court-martial convening authority. That authority may also give procedural instructions not inconsistent with these rules.

(d) *Personnel.*

(1) *Investigating officer.* The commander directing an investigation under this rule shall detail a commissioned officer not the accuser, as investigating officer, who shall conduct the investigation and make a report of conclusions and recommendations.